

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

JESSE BREWER,

Plaintiff,

v.

ORDER
05-CV-376S

C.O. CHRISTOPHER F. KAMAS and
C.O. ROBERT G. HELD,

Defendants.

1. On May 31, 2005, Plaintiff commenced this civil rights against Defendants under 42 U.S.C. § 1983. On January 9, 2007, Plaintiff filed a Motion for Summary Judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure. (Docket No. 22.) Defendants filed a Motion for Summary Judgment on February 5, 2007. (Docket No. 26.) On October 25, 2007, this Court referred these motions to the Honorable Leslie G. Foschio, United States Magistrate Judge, for the issuance of a Report and Recommendation pursuant to 28 U.S.C. § 636(b)(1)(B). (Docket No. 42.)

2. On January 9, 2008, Judge Foschio filed a Report and Recommendation, in which he recommends that (1) Plaintiff's motion be denied in its entirety; (2) Defendants' motion be denied as to Plaintiff's excessive force claim, his retaliation claim based on the use of excessive force, and as to qualified immunity; and (3) Defendants' motion be granted as to Plaintiff's retaliation claim based on the issuance of a false misbehavior report. (Docket No. 43.)

3. No objections to Judge Foschio's Report and Recommendation were received from either party within ten days of the date of its service, in accordance with 28 U.S.C. § 636(b)(1)(C) and Local Rule 72.3(a)(3).

4. This Court has carefully reviewed the Report and Recommendation, as well as the pleadings and materials submitted by the parties, and will accept Judge Foschio's recommendations.

IT HEREBY IS ORDERED, that this Court accepts Judge Foschio's Report and Recommendation (Docket No. 43) in its entirety, including the authorities cited and the reasons given therein.

FURTHER, that Plaintiff's Motion for Summary Judgment (Docket No. 22) is DENIED.

FURTHER, that Defendants' Motion for Summary Judgment (Docket No. 26) is GRANTED in part and DENIED in part consistent with Judge Foschio's Report and Recommendation.

FURTHER, that by separate Order, the parties will be directed to engage in mediation.

SO ORDERED.

Dated: February 6, 2008
Buffalo, New York

/s/William M. Skretny
WILLIAM M. SKRETNY
United States District Judge